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Thomas Albertson

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EXAMINER

ARAJ, MICHAEL J

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Claim Objections

Claims 23-25 are objected to because of the following informalities: These claims are dependent from a canceled claim which is not valid. For examination purposes these claims will be interpreted as being dependent from claim 1. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6-9, 12-13, 16, 17, 20, 21, 26, 28, 45-48 are rejected under 35 U.S.C. 102(b) as being anticipated by Cole et al. (U.S. Publication No. 2002/0091391).

Cole et al. disclose a reconstruction system comprising a flexible cable (20) having first and second ends, a crimp fitting member (14), at least one locking cannulated threaded screw (150) having a cannulation and at least one reconstruction plate (32) comprised of at least one plate hole, wherein the first end of the cable comprises a crimp fitting member and wherein the crimp fitting member comprises a flat round disk-like head. The crimp fitting member comprises a preinstalled flattened disk-like crimp head having a diameter of from about 2mm to about 10mm and a thickness of from about .1mm to about 4mm and being composed of stainless steel. The crimp head is flat and has an upper and lower surface comprising rounded edges. The first portion

of the crimp fitting member comprises a crimp shaft extending perpendicular to the lower surface of the crimp fitting member. (This is considered to be the hole in element 14) The flexible cable is comprised of a single strand wire and is cerclage wire and configured to lock with a bone fastener. The cannulated screw is selected from the group consisting of a locking and a non-locking screw that is at least partially threaded. With regard the statement of intended use and other functional statements, they do not impose any structural limitations on the claims distinguishable over Cole et al. which is capable of being used as claimed if one so desires to do so. *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Furthermore, the law of anticipation does not require that the reference “teach” what the subject patent teaches, but rather it is only necessary that the claims under attack “read on” something in the reference. *Kalman v. Kimberly Clark Corp.*, 218 USPQ 781 (CCPA 1983). Furthermore, the manner in which a device is intended to be employed does not differentiate the claimed apparatus from prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 14, 17, 18, 75, 77, 79 and 80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cole et al. (U.S. Publication No. 2002/0091391).

Cole discloses the claimed invention except for the crimp head being of a polygonal shape or the crimp shaft being of a non-circular cross-section and having a kit with a plurality of crimp fitting members, screws and plates. It would have been an obvious matter of design choice to one skilled in the art at the time the invention was made to construct the crimp head and shaft in these manners, since applicant has not disclosed that such solve any stated problem or is anything more than one of numerous shapes or configurations a person ordinary skill in the art would find obvious for the purpose of providing a forming edge in the heating portion or clamp. In re Dailey and Eilers, 149 USPQ 47 (1966). It would have also been obvious to have a kit customized to cater to the preference of a specific surgeon during a specific procedure and in such case may also provide additional equipment preferences of the surgeon. Such an example can be referenced to Vagley (U.S. Patent No. 6,158,437 col. 5, lines 40-50)

With regard to claims 18 and 19 it would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the diameters, lengths and angles of the plate holes in the ranges claimed, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Allowable Subject Matter

Claims 10, 15, 27 and 29-44 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to claims 1-9, 12-13, 16-18, 20, 21, 26, 28, 45-48, 75, 77, 79 and 80 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for art cited of interest.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL J. ARAJ whose telephone number is (571)272-5963. The examiner can normally be reached on M-F 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael J Araj/
Examiner, Art Unit 3733

/DAVID J ISABELLA/
Supervisory Patent Examiner, Art Unit 3774

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